

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO BRANCH OFFICE

BOGHOSIAN RAISIN PACKING COMPANY, INC.,

and

Case 32-CA-19165

PACKING HOUSE EMPLOYEES AND
WAREHOUSEMEN'S, LOCAL NO. 616,
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, AFL-CIO

Virginia Jordan, Esq.
Of Oakland, California
On Behalf of the General Counsel

Howard A. Sagaser, Esq.
Sagaser, Franson & Jones
Of Fresno, California
On Behalf of Respondent

DECISION

Statement of the Case

John J. McCarrick, Administrative Law Judge. This case was tried in Fresno, California on June 18, 2002, upon the General Counsel's complaint issued January 15, 2002 which alleges that Boghosian Raisin Packing Company, Inc., (Respondent) committed certain violations of Sections 8(a)(1)¹ of the National Labor Relations Act. 29 U.S.C. 151 et seq. (Act) by interrogating an employee concerning the union activities and sentiments of other employees, by interrogating employees concerning those employees' and other employees' union activities and sentiments and by threatening to discharge employees who spoke to other employees about the Union². Respondent timely denied any wrongdoing.

¹ In her post hearing brief, Counsel for the General Counsel moved to withdraw paragraph 6(b) of the complaint as there was no evidence to support the allegation. Counsel for the General Counsel's motion to withdraw paragraph 6(b) of the complaint is granted.

² In her post hearing brief Counsel for the General moved to amend the complaint to allege that Respondent violated Section 8(a)(1) of the Act on May 17, 2001 by threatening to discharge employees who spoke to other employees about the Union. An unpled but fully litigated matter may support an unfair labor practice finding despite a lack of an allegation in the complaint. *Groves Truck & Trailer*, 281 NLRB 1194, 1202 (1986). As this issue was fully litigated at the hearing, I will permit the amendment.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the brief³ filed by Counsel for the General Counsel, I make the following:

Findings of Fact

5

I. Jurisdiction

The Respondent, a California corporation, operates a raisin packing facility in Fowler, California, where it annually sells and ships goods valued in excess of \$50,000 directly to points outside the State of California. During the past 12 months, Respondent, in the course and conduct of its business operation, purchased and received at its facility in Fowler, California goods, materials and or services valued in excess of \$50,000 directly from suppliers located outside the State of California. Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Packing House Employees and Warehousemen's Union, Local No. 616, International Brotherhood of Teamsters, AFL-CIO (Union) is a labor organization within the meaning of Section 2(5) of the Act.

20

II. Alleged Unfair Labor Practices

A. The Facts

Since about 1970 the Union has represented a unit of Respondent's employees engaged in the processing, handling and packing of dried fruits and nuts. The parties negotiated a series of collective bargaining agreements, the latest of which was effective from 1996 to May 31, 1999⁴.

1. The May 17, 2001 Interrogation and Threats to Margarita Ayala

Margarita Ayala (Ayala), one of Respondent's strike replacements, hired on October 5, 1999, testified that on May 17, 2001, Respondent's president, Philip Boghosian (Boghosian) and plant manager, Richard Lokey (Lokey), called her into the office. Boghosian asked Ayala what she was hearing as far as rumors about the Union and what Celia Guevara (Guevara), a co-worker, was saying about the Union. Ayala replied that (Guevara) told her the insurance that the Union offered was better than the insurance that the company offered. Boghosian asked Ayala, "Doesn't she (Guevara) think I can fire her? Ayala could not remember when this conversation took place. Only after having her recollection refreshed by looking at her affidavit was she able to recall that the conversation occurred on May 17, 2001. On cross-examination Ayala was unable to recall the date of the alleged interrogation and threat by

40

³ Neither Respondent nor Charging Party filed post-hearing briefs.

⁴ In a Decision in cases 32-CA-17721, 32-CA-17839 and 32-CA-17985 dated October 31, 2000, Administrative Law Judge James Rose found that by engaging in an illegal strike on or about October 1, 1999, Respondent's striking employees lost their status as employees and Respondent was privileged to discharge them. Judge Rose found that after discharging the striking workers, Respondent began hiring replacements and was presented with a petition signed by a substantial majority of its employees stating that they did not want to be represented by the Union. Judge Rose concluded that the petition established that Respondent had a good faith doubt of the Union's continued majority status and that the Respondent's withdrawal of recognition of the Union on February 1, 2000, was not unlawful. Judge Rose dismissed General Counsel's complaint in its entirety.

45

Boghosian. She said it was both before and after her three-day suspension in April 2001. She then said Boghosian asked her if employees wanted a union or not. She then said Boghosian questioned her two or three times and that it was in February of 2001 that Boghosian asked her what Celia was saying about the Union. Later in her testimony, after reviewing her affidavit
 5 concerning a conversation that allegedly occurred on June 13, 2001, the witness had no recollection of the June 13 conversation. I find that Ayala's recollection is suspect and accordingly she is not a credible witness. I do not credit her testimony.

2. The August 10, 2001 Interrogations of Ayala and Joaquina Sanchez

10 On August 10, 2001, Terry Lane (Lane), a private investigator Respondent hired, conducted a series of taped interviews with Respondent's employees, including Ayala and Joaquina Sanchez (Sanchez). Respondent hired Sanchez as a strike replacement on October 5, 1999. The purpose of the investigation was to investigate allegations of employee
 15 misconduct including, *inter alia*, sexual harassment.

On August 10 Lane first interviewed Sanchez. The entire transcript of the interview is 77 pages and is entirely devoted to allegations of employee misconduct. Lane asked Sanchez the following questions at pages 34 and 35 of the transcript:

20 Q. Do you feel that she (Guevara) was trying to stir up trouble between yourself and Margarita and the rest of the group?

25 A. See, okay, this is just like Judge Judy says, "I don't want to hear what she said, I want to hear what you heard" and I did not hear her say that but that has been a lot of, a lot of rumors that what she wants is the union back.

Q. Have you heard her say that?

30 A. I have not heard her say that.

Q. Have you ever heard her say anything that gave you that impression? Did she say things were better when the union was here?

35 A. Yes, when I first use (sic) to talk to her because I use (sic) to tell her, uh, she goes, "This is nothing. The line's use to work faster" and I go, "Yeah. I also heard that the foreman was pretty bad." —I said, "—that he use to yell at the people." He goes, "Oh, yeah and he use to like this (snapping fingers) you know, that the other
 40 foreman was like that and I said, uh, she goes, "Well what's good about the union that we had good insurance." She goes, "Yeah, but it's not, it's not good enough." So Angelina told me personally that she wanted us out, especially me and Margarita.⁵

45 Lane interviewed Ayala later in the morning of August 10 after Sanchez' interview. The transcript of the taped conversation consisting of 48 pages, devoted primarily to allegations of employee misconduct, reflects that Lane asked Ayala the following series of questions at pages 39-40:

⁵ General Counsel's exhibit 3, pages 34-35.

Q. Had she (Guevara) ever indicated that things were better before the strike⁶ here at Boghosian than they are now?

A. Yes.

Q. What have you heard?

A. She has told me things. She told me – she told me that during the time that they used to work before the strike, everything was good, everything was perfect. And then now everything was worth, um, for shit. That first of all there was no security in your job because, um, at any time if that fucker says anything they'll fire us. And before with the union we could do whatever we want. We had good insurances (sic) for everything and now this shit doesn't – is not worth anything. She's told me.

Q. Has she told the other employees the same thing?

A. She's told everybody. She has everybody like in favor of her, so that, um, the other employees could make, um, the company fire me and Juaquina. She – because, um, during the time that, um, the strike was going on and we were hired, um, they – she said that me and, um, – we helped, um, fill up, get rid of the union. And I guess that's when they started getting, um, upset at us, to us, because we said that we didn't care if there was a union, or no union. And everybody would say that, um, we had been bought with a six-pack of soda.

Q. Who said that?

A. Eliazar. And Mizael told me that, um, what the hell did we care about it. That what – why were we so worried about, um, if there was union, or no union. That why were we accepting Philip's offer? And I told him that all I wanted to do was work, I – that I have never had union.

Q. Anything else that Celia has said regarding that?

A. She said, uh, at some – sometimes that, um, she would prefer the job that she had before or the working environment that there was before than what it is now. That she was not happy.⁷

B. The Analysis

1. The May 17 Interrogation and Threats to Ayala.

The only evidence of the May 17 interrogation and threats to Ayala was Ayala's testimony. Since I have not credited her testimony, there is no evidence to support this allegation and it is dismissed.

⁶ The word "strife" appears in the transcript. The parties stipulated that the word should read "strike".

⁷ General Counsel's exhibit 2, pages 39-40.

2. The August 10 Interrogations of Ayala and Sanchez.

The evidence proffered to support these complaint allegations consists of the transcribed interviews of both Ayala and Sanchez.

In general, it is unlawful for an employer to inquire as to the union sentiments of its employees. *President Riverboat Casinos of Missouri*, 329 NLRB 77 (1999). Whether an interrogation is unlawful is determined by the totality of the circumstances. *Rossmore House*, 269 NLRB 1176, 1177 (1984); *Sunnyvale Medical Clinic*, 277 NLRB 1217 (1985). The standard is whether under all the circumstances the alleged interrogation reasonably tends to interfere with, restrain, or coerce employees in the exercise of their Section 7 rights. The Board applies an objective standard when determining whether a statement is coercive. *MDI Commercial Services*, 325 NLRB 53, 63-64 (1994).

Counsel for the General Counsel contends that the questions asked by Respondent's investigator Lane were unlawful since they tended to interfere with, restrain or coerce Respondent's employees.

In her brief Counsel for the General Counsel concedes that the interviews of Ayala and Sanchez were for the purpose of determining the relationships between employees to improve the atmosphere at work. Indeed 125 pages of transcript of Ayala and Sanchez' interviews are devoted to subjects unrelated to the Union. Two pages are devoted to questions about the Union. It must also be remembered that these interviews did not take place in the context of unremedied unfair labor practices or ongoing Union organizing activity. Rather the interviews were conducted as a result of allegations of sexual harassment and employee misconduct. Lane did not initiate discussion of the Union with Sanchez. Sanchez brought the subject up. In Ayala's interview, while Lane asked if Guevara said things were better at Respondent before the strike, Ayala brought up the subject of the Union. Lane testified credibly that in using the reference to the strike he was using it as a point in time. While Lane appears to have been acting as an agent of Respondent within the meaning of Section 2(13) of the Act, he was not a highly placed supervisor or manager of Respondent. He also made it clear that Ayala and Sanchez' participation was voluntary and there was to be no retaliation for giving the interviews.

Under all of the circumstances, I find that the questions asked by Lane of Ayala and Sanchez did not reasonably tend to interfere with, restrain or coerce an employee in the exercise of their Section 7 rights. These complaint allegations will be dismissed.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁸

⁸ If no exceptions are filed as provided by Section 102.46 of the Board's Rules and Regulations, the findings, conclusions and recommended Order shall, as provided in Section 102.48 of the Board's Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

The complaint is dismissed in its entirety.

5

Dated, San Francisco, California, September 20, 2002.

10

John J. McCarrick
Administrative Law Judge

15

20

25

30

35

40

45